IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5924 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL RAMABEN SUKHABHAI

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 5924 of 2002

MR KB PUJARA for Petitioner No. 1-4

MR MUKESH R SHAH for Respondent No. 1

MS MANISHA SHAH, Ld. AGP for Respondent No. 2 & 3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 18/02/2003

ORAL JUDGEMENT

1. Leave to delete respondents No.3 and 4 and further leave to add State Government through Secretary, Education Department as party respondent.

2. Rule. Mr.M.R.Shah, learned Counsel, waives service of notice of rule for respondent No.1 and Ms.Manisha Shah, learned AGP waives service of notice of rule for respondents No.2 and newly added No.3. With the consent of the parties, the matter is taken up for final hearing today.

3. Having heard Mr.Pujara, learned Counsel for the petitioners, Mr.M.R.Shah, learned Counsel for respondent No.1 and Ms.Manisha Shah, learned AGP for respondents No.2 and 3, I am of the view that the matter is fully covered by the decision of this Court dated 1-2-2003 in SCA No.5378 of 2001 and allied matter. In the aforesaid decision dated 1-2-2003, in view of the judgement dated 12-7-2001 passed by this Court (Coram: P.B.Majmudar, J.) in SCA No.2506 of 2001 interpreting the resolution dated 8-12-1999, the matter was directed to be reconsidered. In view of the same reasoning the case of the petitioners is required to be considered by the Secretary, Education Department on the same line as has been directed in SCA No.5378/2001. In the present case also, the petitioners are appointed prior to the resolution dated 8-12-1999 and, therefore, the matter is required to be considered accordingly. The distinguishing feature in the present case is that the District Education Committee, Dahod has denied the benefits of lien to the petitioners, whereas in SCA No.5378/2001 the Secretary, Education Department had denied the benefits of lien, but the ground in the present case as well as in earlier SCA No.5378/2001 was the resolution dated 8-12--1999. As observed in the aforesaid decision dated 1-2-2003 in SCA No.5378/2001, the view taken by this Court (Coram: Coram: P.B.Majmudar, J.) interpreting the resolution dated 8-12-1999 is that those who were in the employment at the time when the resolution came to be passed should be extended the benefits of lien and they should have been treated eligible for such purpose.

4. No further discussion is required and on the basis of the same reasoning, the decision of the respondent District Education Committee, Dahod for denying the benefits of lien to the petitioners on the basis of resolution dated 8-12-1999 is quashed and set aside and in place of the District Education Committee,

the Secretary, Education Department shall consider the matter afresh upon the representation which may be filed by the petitioners within a period of two weeks from today and the Secretary, Education Department, shall consider the matter afresh in view of the judgement of this Court (Coram: P.B.Majmudar, J.) and shall render the decision within a period of three months from the date of receipt of the order of this Court. It is further clarified that the Secretary, while passing the order, shall take into consideration all the details, which are produced by the petitioners, by the concerned Ashram Shala, where the petitioners are working, by the District Panchayats and also the record which may be produced by the District Education Committee. The decision shall also be communicated by registered A.D. post to the petitioners.

5. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. Office shall also send copy of the judgement dated 1-2-2003 passed by this Court in SCA No.5378/2001 and allied matter to the newly added respondent No.3 together with the writ of this order. Direct service is permitted.

18-2-2003 (Jayant Patel, J.)

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